

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BERDINE CLARKE AND O.L.,)	
)	
Plaintiffs,)	Civil Action No.:
)	1:18-CV-11409
v.)	
)	
JOAN M. BENGTON, M.D.,)	
SARAH C. LASSEY, M.D.,)	
BRIGHAM & WOMEN'S PHYSICIAN)	
ORGANIZATION, INC. AND)	
JOHN DOE CORPORATION)	
)	
Defendants.)	
)	

ANSWER OF DEFENDANT, SARAH C. LASSEY, M.D. AND DEMAND FOR JURY TRIAL

Now comes the defendant, Sarah C. Lassey, M.D., and hereby answers the plaintiffs' Complaint, paragraph by paragraph, as follows:

JURISDICTION AND VENUE

1. This paragraph contains conclusions of law to which no answers are required. To the extent an answer is deemed required to any statement set forth in this paragraph, such statements are denied.
2. This paragraph contains conclusions of law to which no answers are required. To the extent an answer is deemed required to any statement set forth in this paragraph, such statements are denied.
3. This paragraph contains conclusions of law to which no answers are required. To the extent an answer is deemed required to any statement set forth in this paragraph, such statements are denied.

PARTIES

4. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

5. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

6. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

7. The defendant admits that she was a resident physician during the relevant time frame. The defendant further admits the contents of the allegations contained within the second, third and fourth sentences of this paragraph.

8. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

9. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

FACTUAL BACKGROUND

10. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

11. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

12. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

13. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

14. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

15. In answering the allegations made in paragraph 15, the defendant states that the particular details of the care and treatment received by Ms. Clarke are set forth with specificity in the medical record maintained by the hospital and that the record speaks for itself. Further answering, the defendant denies the allegations set forth in paragraph 15 to the extent that they are contrary to or inconsistent with the information contained within the medical record, the independent recollection of the defendant, and/or her standard practices.

16. In answering the allegations made in paragraph 16, the defendant states that the particular details of the care and treatment received by Ms. Clarke are set forth with specificity in the medical record maintained by the hospital and that the record speaks for itself. Further answering, the defendant denies the allegations set forth in paragraph 16 to the extent that they are contrary to or inconsistent with the information contained within the medical record, the independent recollection of the defendant, and/or her standard practices.

17. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

18. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

19. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

20. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

21. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

22. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

23. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

24. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

25. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

26. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

27. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

CLAIMS

28. The defendant denies the allegations contained in this paragraph.

29. The defendant denies the allegations contained in this paragraph.

30. The defendant denies the allegations contained in this paragraph.

31. The defendant denies the allegations contained in this paragraph.

32. The defendant denies the allegations contained in this paragraph.

COUNT I

Count I of the plaintiff's Complaint does not contain any allegations against this defendant. Consequently, no response is required.

COUNT II

- 35. The defendant repeats and reaffirms its responses to paragraphs 1 through 34 and incorporates them herein.
- 36. The defendant denies the allegations contained in this paragraph.
- 37. The defendant denies the allegations contained in this paragraph.
- 38. The defendant denies the allegations contained in this paragraph (including its subparts).
- 39. The defendant denies the allegations contained in this paragraph (including its subparts).

COUNT III

Count III of the plaintiff's Complaint does not contain any allegations against this defendant. Consequently, no response is required.

COUNT IV

Count IV of the plaintiff's Complaint does not contain any allegations against this defendant. Consequently, no response is required.

COUNT V

- 47. The defendant repeats and reaffirms its responses to paragraphs 1 through 46 and incorporates them herein.
- 48. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.
- 49. The defendant denies the allegations contained in this paragraph.

COUNT VI

Count VI of the plaintiff's Complaint does not contain any allegations against this defendant. Consequently, no response is required.

COUNT VII

Count VII of the plaintiff's Complaint does not contain any allegations against this defendant. Consequently, no response is required.

COUNT VIII

Count VIII of the plaintiff's Complaint does not contain any allegations against this defendant. Consequently, no response is required.

COUNT IX

Count IX of the plaintiff's Complaint does not contain any allegations against this defendant. Consequently, no response is required.

COUNT X

Count X of the plaintiff's Complaint does not contain any allegations against this defendant. Consequently, no response is required.

COUNT XI

Count XI of the plaintiff's Complaint does not contain any allegations against this defendant. Consequently, no response is required.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The defendant states that, pursuant to Fed. R. Civ. P. 12(b)(1), this Court lacks jurisdiction over the subject matter and this action should be dismissed.

SECOND AFFIRMATIVE DEFENSE

The defendant states that there was a failure to effectuate proper service of process on the defendant and that there is a lack of personal jurisdiction over the defendant as a result of said failure.

THIRD AFFIRMATIVE DEFENSE

The defendant states that the plaintiff's Complaint fails to state a claim upon which relief can be granted, and, therefore, the plaintiff's Complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

FOURTH AFFIRMATIVE DEFENSE

The defendant states that the plaintiff's claims are barred because the plaintiff by her actions has waived her right to recovery or is estopped from seeking the relief requested in her Complaint.

FIFTH AFFIRMATIVE DEFENSE

The defendant states that the plaintiff's claims are barred because the plaintiff failed to mitigate her damages.

SIXTH AFFIRMATIVE DEFENSE

The defendant states that any recovery by the plaintiff is barred or must be reduced in accordance with the comparative negligence of the plaintiff pursuant to M. G. L. c. 231B.

SEVENTH AFFIRMATIVE DEFENSE

The defendant states that any loss sustained by the plaintiff resulted from the plaintiff's own negligence, which was greater in degree than any negligence of the defendant, thus the plaintiff is barred from recovery in this action.

EIGHTH AFFIRMATIVE DEFENSE

The defendant states that the plaintiff's alleged loss or damage was not caused by the defendant or by anyone for whose conduct it is legally responsible.

NINTH AFFIRMATIVE DEFENSE

The defendant states that this action is barred by operation of the applicable Statutes of Limitations.

TENTH AFFIRMATIVE DEFENSE

The defendant requests that a Medical Malpractice Tribunal be held pursuant to M.G.L. c. 231, §60B, to review the sufficiency of the plaintiff's negligence claims.

ELEVENTH AFFIRMATIVE DEFENSE

The defendant reserves the right to raise such additional affirmative defenses as they become known and/or available during the course of this action.

JURY CLAIM

The defendant demands a trial by jury to the fullest extent permitted by law.

Respectfully submitted,

The Defendant,
Sarah C. Lassey, M.D.,
By her Attorney,

/s/ Bridget F. Schley
James P. Donohue, Jr., BBO#555946
Bridget F. Schley, BBO#661465
Diedrich & Donohue, LLP
84 State Street, 10th Floor
Boston, MA 02109
(617) 367-0233

Dated: October 16, 2018

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent via U.S. first class mail to those indicated as non-registered participants on October 16, 2018.

/s/ Bridget F. Schley
Bridget F. Schley